

STATE OF TENNESSEE

Office of the Attorney General



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Reply to:  
Consumer Advocate and Protection Division

June 7, 2004

The Honorable Deborah Taylor Tate  
Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

**RE: IN RE: GENERIC DOCKET ADDRESSING RURAL UNIVERSAL SERVICE**  
**Docket No.: 00-00523**

Dear Chairman Tate:

Enclosed is an original and fourteen copies of the Brief of the Consumer Advocate & Protection Division of the Office of the Attorney General in Response to the Motion for Reconsideration of BellSouth Telecommunications, Inc. and the Petition for Reconsideration of the Commercial Mobile Radio Service ("CMRS") Carriers. We request that this be filed with the the TRA in this docket. All parties of record have been served a copy of this document. If you have any questions, please feel free to contact me at (615) 532-3382. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Shilina B. Chatterjee".

Shilina B. Chatterjee  
Assistant Attorney General

Enclosures

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**IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE:   GENERIC DOCKET                    )  
          ADDRESSING RURAL                ) DOCKET NO. 00-00523  
          UNIVERSAL SERVICE               )**

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**BRIEF OF THE CONSUMER ADVOCATE & PROTECTION DIVISION OF THE  
OFFICE OF THE ATTORNEY GENERAL IN RESPONSE TO MOTION FOR  
RECONSIDERATION OF BELL SOUTH TELECOMMUNICATIONS, INC. AND  
PETITION FOR RECONSIDERATION OF THE COMMERCIAL MOBILE RADIO  
SERVICE ("CMRS") CARRIERS**

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The Attorney General of the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter ("Consumer Advocate"), submits this brief in response to the Motion for Reconsideration of Hearing Officer's May 6, 2004 Order by BellSouth Telecommunications, Inc. ("BellSouth") and the Petition for Reconsideration by the Commercial Mobile Radio Service ("CMRS") Carriers both filed on May 17, 2004. The Consumer Advocate states that the Motion by BellSouth and Petition by CMRS Providers should be denied.

In 1984, the BellSouth and the Coalition entered into agreements whereby the Coalition agreed to be compensated through the toll settlement process managed by BellSouth for traffic

terminated on its network.<sup>1</sup> Thereafter, BellSouth believed it was burdened under the arrangement and that new contracts needed to be entered into with the Coalition members. BellSouth and the Coalition attempted to negotiate a new arrangement. Unfortunately, negotiations failed and BellSouth was unable to renegotiate new contracts with Coalition members. Nevertheless, BellSouth wanted to extricate itself from the existing contracts and unilaterally decided to terminate existing agreements between itself and the Coalition. However, it was determined that BellSouth could not unilaterally terminate the existing arrangements because the Tennessee Regulatory Authority (“TRA”) stated that they have jurisdiction and authority over the toll settlement agreements and have lawful regulatory power over the arrangements.<sup>2</sup> The TRA has unequivocally stated that BellSouth must continue their interconnection arrangements until such time as it is terminated, replaced or modified by the TRA.<sup>3</sup> As such, it is clear that BellSouth has an existing regulatory obligation to maintain interconnection arrangements with Coalition members and they cannot unilaterally terminate the existing interconnection arrangements without TRA involvement and approval. Therefore, the relief granted in the Order<sup>4</sup> issued on May 6, 2004 is just, proper and in the public interest, and

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<sup>1</sup> Initial Order of Hearing Officer, *In Re: Generic Docket Addressing Rural Universal Service*, Docket No. 00-00523, December 29, 2000, p. 4 *citing* June BellSouth letter.

<sup>2</sup> Initial Order of Hearing Officer, *In Re: Generic Docket Addressing Rural Universal Service*, Docket No. 00-00523, December 29, 2000, p. 10 *citing* June BellSouth letter.

<sup>3</sup> Initial Order of Hearing Officer, *In Re: Generic Docket Addressing Rural Universal Service* Docket No. 00-00523, December 29, 2000, p. 12 *citing* June BellSouth letter.

<sup>4</sup> Order Granting in Part the Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition, *In Re: Generic Docket Addressing Rural Universal Service*, Docket No. 00-00523, May 6, 2004, p. 18.

BellSouth's Motion for Reconsideration should be denied.

Concurrently, BellSouth has claimed that the CMRS originated traffic transiting through BellSouth's network is not subject to the existing interconnection arrangements. BellSouth and the Coalition engaged in negotiations concerning the payments for termination of CMRS traffic, however, those negotiations came to an impasse and halted. Even though BellSouth claims that payments in the past to the Coalition for CMRS transit traffic were merely an accommodation, does not permit BellSouth to arbitrarily end the payments. Suggesting that CMRS originated traffic does not fall within the explicit language of the Toll Settlement Agreements, does not mean that it is not subject to the existing arrangements between BellSouth and Coalition members. BellSouth must still compensate Coalition members for this traffic because of existing regulatory obligations. In the Order<sup>5</sup> dated May 9, 2001, the TRA affirmed the December 2000 Hearing Officer Order that CMRS traffic was subject to the Toll Settlement Agreements and is part of the Interconnection Arrangements and nowhere has the TRA stated that these Interconnection Arrangements do not include CMRS traffic. Therefore, CMRS originated traffic is subject to the current Interconnection Arrangements. Under the Interconnection Arrangements, BellSouth has a regulatory obligation to continue and maintain payments to the Coalition. The decision in the Order<sup>6</sup> issued on May 6, 2004, is the proper remedy at this time and serves the public interest.

It would be inappropriate for BellSouth to suddenly abandon this undertaking and

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<sup>5</sup> Order Denying BellSouth Petition for Appeal and Affirming the Initial Order of the Hearing Officer, *In Re: Generic Docket Addressing Universal Service*, Docket No. 00-00523, May 9, 2001.

<sup>6</sup> Order Granting in Part the Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition, *In Re: Generic Docket Addressing Rural Universal Service*, Docket No. 00-00523, May 6, 2004, p. 18.

dishonor the existing arrangements merely because they believe that they no longer have an obligation to provide payment to Coalition members or carry the transit traffic. The existing arrangements govern interconnection with each Coalition member and as such, the decision rendered in the Order<sup>7</sup> dated May 6, 2004 appropriately grants relief to the Coalition members and even provides for a contingency that until one of three conditions results, BellSouth has a regulatory obligation to continue to remit payment to the Coalition members. The relief granted in the Order is reasonable and an appropriate remedy under the circumstances.

It is essential that we note that the payments being made by BellSouth were a result of voluntary negotiations between BellSouth and Coalition members. Further, the payments are made in accordance with terms and conditions of an existing contractual agreement between the parties, and the TRA has jurisdiction over the agreements between BellSouth and the Coalition. Until such time the existing terms and conditions are modified, replaced or terminated, BellSouth has a duty to abide by them and continue the payments to the Coalition. In the absence of another arrangement or regulatory mandate, it is incumbent upon BellSouth to honor their current arrangement with the Coalition concerning payment for termination of transit traffic. Merely because BellSouth and the CMRS Providers state that BellSouth should be relieved of the responsibility of payment for the termination of traffic is not sufficient to allow BellSouth to discontinue payment. Only when new terms and conditions are established and approved by the TRA will BellSouth be relieved of their current responsibility to the Coalition members.

As we are all aware, the determination of who will pay for termination of calls to Coalition

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<sup>7</sup> Order Granting in Part the Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition, *In Re Generic Docket Addressing Rural Universal Service*, Docket No 00-00523, May 6, 2004, p. 18.

members will be decided in Docket No 03-00585. It should be noted that Docket No. 03-00585 addresses the situation between CMRS Carriers and the Coalition. In the matter at hand, the main issue is the existing terms and conditions between BellSouth and Coalition members and only until such time as the existing terms and conditions are no longer applicable can BellSouth discontinue payments to Coalition members. This docket is to enforce the rights of the Coalition members under the existing terms and conditions concerning existing interconnection agreements. . Therefore, the Petition for Reconsideration filed by the CMRS Carriers should be denied since Docket No. 03-00585 will address their rights, duties and obligations with respect to the Coalition members.

It is essential that the TRA consider that there not be a disproportionate burden on the rural providers and their ability to provide telecommunications services at affordable rates. It is necessary to determine whether universal service could not be maintained as it currently exists if the Motion for Reconsideration or the Petition for Reconsideration are granted. It is critical to bear in mind that the primary concern should be universal service in Tennessee and, accordingly, without TRA approval to discontinue payments, BellSouth must continue to make the payments to the Coalition. The Hearing Officer appropriately granted emergency relief to Coalition members in the interim period and as such the Motion for Reconsideration and Petition for Reconsideration should be denied by the TRA.


As stated in previous filings, it is imperative that the TRA consider all factors including the mandate concerning universal service. The impact on universal service should be a paramount consideration for the TRA in this docket. It is essential that the TRA fully evaluate the impact of modification or termination of the existing arrangements so that the ability of the Coalition to

maintain and advance universal service is not hampered in the State of Tennessee. The TRA should be cognizant that any decision they render does not adversely impact the statewide plan established to preserve and advance universal service in the rural areas of Tennessee that are served by the Coalition members. Although a long term solution between wireless providers and rural coalition companies should be sought, BellSouth should not be allowed at this time to sever itself from long standing obligations. The foremost concern is the public interest regarding the maintenance and sustenance of universal service in the areas of rural Tennessee served by the Coalition. The existing terms and conditions between BellSouth and the Coalition should remain applicable until they are modified, replaced or terminated by the TRA or as a result of arbitration in Docket No. 03-00585. The Hearing Officers Order dated May 6, 2004 granting Emergency Relief and Standstill to Coalition members was just and appropriate.

#### CONCLUSION

For the foregoing reasons, the Attorney General of the State of Tennessee through the Consumer Advocate, respectfully requests that TRA to deny both BellSouth's Motion for Reconsideration and the CMRS Carriers' Petition for Reconsideration.

Respectfully submitted,

  
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DATED: June 7, 2004



## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on parties below via U.S. Mail, postage prepaid, this June 7, 2004

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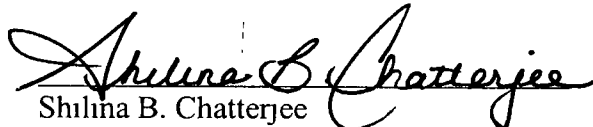
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